

Portland Harbor Superfund Site

January 2007

Hot Issues

Issue: Region 10 plans to issue Unilateral Orders to non-settling parties

Background/Status: The Portland Harbor Superfund Site was listed on the National Priorities List in December 2000 based on sediment contamination in the lower Willamette River. EPA and ten Potentially Responsible Parties (PRPs) signed an Administrative Order on Consent (AOC) in 2001 to perform a remedial investigation/feasibility study (RI/FS) of the Site. The parties, collectively known as the Lower Willamette Group (LWG), have been conducting this multi-year investigation under EPA oversight. On April 28, 2006, EPA sent 27 additional parties, a variety of industrial sources and four federal agencies, a general notice letter notifying them of potential liability at the Site. EPA requested that the parties become a cooperating party at the Site by participating in the RI/FS. EPA also informed the parties that if they failed to become a cooperating party, EPA could decide to issue a Unilateral Administrative Order (UAO) for participation and cooperation or for performance of work.

During the course of the negotiations for participation in the RI/FS, most of the parties joined together to form the Blue Water Group (BWG). The four federal agencies and one company (Mar Com) did not join the BWG. On December 15, 2006, the BWG presented the LWG with a final term sheet signed by eighteen of the twenty-two BWG members. On December 22, 2006, the LWG signed the term sheet accepting it as the basis for a settlement in principle among the two groups.

Five parties – Beazer, NL Industries, Tube Forgings, Front Avenue LLP and Mar Com - did not sign the term sheet presented by the BWG. Region 10 determined that the parties have not presented a good faith offer for participation. EPA sent letters to those parties urging them to settle and advising them of our intent to issue UAOs for performance of work.

The Oregonian and the Portland Tribune recently ran articles about the pending settlement. One of the parties, Beazer, recently advised EPA that they intend to rejoin the Blue Water Group and participate in the settlement.

Message:

- The settlement will provide additional funds for completion of the investigation and provide for a more equitable sharing of costs among the potentially responsible parties.

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Issue: Early Cleanup Action at Port of Portland Terminal 4 Design Issues

Background/Status: EPA has agreements with three parties for early cleanup actions in the Portland Harbor Site. The Port of Portland's early action at Terminal 4 includes construction of a confined disposal facility (CDF) in one slip and dredging and consolidation of sediments from another slip at Terminal 4. The CDF will have additional capacity where other contaminated sediments from the Site could be disposed if they meet acceptance criteria. EPA selected this early action following public comment during which a significant number of commenters disagreed with the locating the confined disposal facility at Terminal 4. EPA determined that the facility could be designed and constructed to be protective and address the concerns (flooding and earthquakes) that were raised. The project is in the design phase, and the Port's schedule calls for construction to begin this year.

EPA recently provided extensive comments on the 60% design that need to be addressed and advised the Port that the 60% design was not approvable. The following provides a general summary of the nature of some of EPA's comments:

- Performance standards need to be reviewed and strengthened.
- A more specific dredging approach is needed to minimize dredging residuals, provide additional information on the post-dredging monitoring process, and provide for additional post-monitoring dredging passes to fully achieve cleanup levels.
- CDF groundwater modeling needs more work, including clarification of the volumes and characteristics of weir discharges and proposed CDF discharge monitoring.
- Clarification of applicable water quality standards/criteria, monitoring methods, analytes, and points of compliance.
- Dredging specification inappropriately focused on dredging to the design prism rather than dredging to achieve clean up goals based on post-dredge sampling.
- Sediment Acceptable Criteria Technical Memorandum - EPA believes it is critical to anticipate what other sediments might be accepted into the CDF, make a preliminary evaluation of the characteristics of these sediments, and factor these characteristics into the CDF design analyses, in order to have confidence that the CDF can meet its performance standards.
- Wetlands Mitigation Plan changes needed to resolve ESA concerns, mitigation adequacy rationale, and administrative implementation issues and the need to revise the stated performance measures and monitoring methods, and define roles for constructing, monitoring, and taking contingent actions.

The Port has expressed concerns that EPA's comments will significantly increase costs, impact the schedule, and are inconsistent with and in excess of what EPA required at similar facilities in Commencement Bay. EPA believes that the additional design elements are necessary to ensure that the facility is constructed and operated in a protective manner. To keep the process moving forward, EPA expects that issues identified with the 60% design to be resolved with interim deliverables, meetings and discussions, and submittal of the draft 100% design. The Port is considering raising the issues for formal dispute resolution, and may reconsider whether to move forward with the CDF project.

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Issue: Funding for the U.S. Moorings Property investigation and cleanup

Background/Status: Region 10 has been asking the U.S. Army Corps of Engineers (USACE) to enter into a Federal Facility Agreement (FFA) for the investigation and cleanup of this federally-owned property within the Portland Harbor site. EPA has been unsuccessful, until recently, in getting the USACE to sign an FFA because they have claimed they need a separate, special appropriation for this work and Congress has been unwilling to appropriate these funds for this purpose. The Region's concern is that the RI/FS being prepared by the LWG is well underway, but our work with this federal facility has been lagging behind. If the USACE doesn't begin their RI/FS soon, we will not be able to integrate in this portion of the site into the larger RI/FS and the final remedy for the site.

In October 2006 EPA sent a letter to the USACE with a draft FFA for signature. After much discussion and the threat of going to the Department of Justice for some relief, the USACE has acknowledge that they do not need to seek a separate appropriation, and have developed a proposal for funding to send to their Headquarters for approval. The source of funding they plan to use is an insurance fund that they have previously been reluctant to use for this work. But the USACE is most likely going to ask Congress for a special appropriation to pay for the action remedy because they don't want to spend (potentially) millions from this limited insurance fund for just one site.

Message:

- Depending on the cost of the selected remedy, the USACE may still seek a separate appropriation to pay for the remedy at this site. We support USACE in seeking these funds from Congress. If, however, Congress doesn't provide an appropriation, we believe they should use their existing insurance fund to pay for the remedy and not use the lack of an appropriation as an excuse for no action.

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